

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## THE BANK OF NEW YORK MELLON,

Case No. 2:16-CV-2571 JCM (DJA)

**Plaintiff(s),**

## ORDER

V.

ELKHORN COMMUNITY ASSOCIATION,  
ET AL.,

**Defendant(s).**

On December 23, 2019, the Ninth Circuit reversed and remanded the court’s order entering summary judgment in favor of plaintiff Bank of New York Mellon (“BNYM”). (ECF No. 60).

The instant case is the second action BNYM has brought against Elkorn Community Association concerning the same property. In the first action, this court granted Elkorn's motion to dismiss pursuant to Local Rule 7-2(d). The Ninth Circuit noted that, “[u]nder Nevada law, a dismissal for failure to follow court rules was an ‘adjudication upon the merits,’ ‘even though the substantive issues have not been tried.’” (ECF No. 61 at 5 (citing *Five Star Capital Corp. v. Ruby*, 194 P.3d 709, 715 (Nev. 2008) (en banc)).

On appeal, the Ninth Circuit held that Rule 41(b) and the doctrine of claim preclusion bar the instant action. *Id.* at 3–4. Thus, the Ninth Circuit remanded the case with instructions to dismiss. *Id.*

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that BNYM's complaint be, and the same hereby is, DISMISSED.

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1           The clerk is instructed to enter judgment and close the case accordingly.

2           DATED January 24, 2020.

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UNITED STATES DISTRICT JUDGE